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SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-6949

JACOB JOHN DOUGAN, JR.,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

Supreme Court of Florida

No. 47,260

JACOB JOHN DOUGAN, JR., Appellant,

vs.

STATE OF FLORIDA, Appellee.

[April 9, 1981]

PER CURIAM.

Jacob Dougan was convicted of first degree murder and sentenced to death in a trial proceeding which we affirmed on direct appeal. Barclay v. State, 343 So.2d 1266 (Fla. 1977), cert. denied, 439 U.S. 892 (1978). At approximately the same time that our decision was rendered in that case, the United States Supreme Court released its opinion in Gardner v. Florida, 430 U.S. 349 (1977), holding that it is a denial of due process for the death sentence to be imposed when the trial judge, in weighing the aggravating and mitigating circumstances of the case, considers information which the defendant had no opportunity to deny or explain.

In order to provide for all persons whose sentences of death had been approved by this Court the protections which Gardner required, and to provide for a uniform procedure to hear applications for relief filed in reliance on Gardner, we entered so-called "Gardner relief orders" for all affected individuals. After one such order was entered for Dougan, we vacated Dougan's sentence and remanded for resentencing, Barclay v. State, 362 So.2d 657 (Fla. 1978), because the record and response of the

trial judge did not clearly indicate that Dougan's counsel had a meaningful opportunity to be heard on any of the matters contained in the pre-sentence investigation report which the trial judge had considered in his original sentencing order. In taking that action, we expressly remanded the case for a new hearing "at which the defense [would have] the opportunity to rebut any of the information contained in the pre-sentence investigation reports . . . ." Id. at 658. Our directive was quite clear that this Court would review a reimposition of the death penalty, "limited to matters related to the compliance with this order." Id.

The trial judge who originally sentenced Dougan conducted a three-day hearing at which Dougan's attorney produced twenty-six character witnesses and made a number of motions. All motions were denied by the trial judge, and at the conclusion of the hearing a new death sentence was imposed. The case is now back in this Court to review that sentence of death. On the basis of a close review of the transcript of the three-day hearing and all other matters submitted to the Court in conjunction with the appeal now pending, we are satisfied that the trial judge's new sentence of death is appropriate.

Counsel for Dougan filed multiple motions during the course of the Gardner remand proceeding, not one of which was directed to the mandate we had issued. Treating the remand as an opportunity to revisit the constitutionality of the death penalty, the bias of the trial judge, the impropriety of articulated aggravating circumstances found in the original sentencing order, and a range of other matters unrelated to our directive, Dougan's counsel endeavored to treat the remand as a full-blown sentencing proceeding. The trial judge properly rejected counsel's attempt to expand the proceeding.

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Songer v. State, 365 So.2d 696 (Fla. 1978), cert. denied, 441 U.S. 956 (1979).[1]

Our vacation of Dougan's death sentence for Gardner relief was technically-based, serving the sole purpose of allowing Dougan's counsel to demonstrate that matters contained in the pre-sentence investigation report were improper and prejudicial. Dougan has now had that opportunity, and from the record he has failed to show that any information contained in the pre-sentence investigation report was in any way erroneous, misleading or prejudicial.

We now hold that Dougan was not prejudiced by the trial court's early consideration of a pre-sentence investigation report which his counsel originally had no opportunity to rebut, that the original findings of the trial court were not tainted or otherwise rendered invalid by the pre-sentence investigation report, and that the reimposition of a death penalty was proper. We affirm the sentence imposed by the trial judge.[2]

It is so ordered.

ADKINS, ACTING C.J., BOYD, ENGLAND and ALDERMAN, JJ., Concur
McDONALD, J., Dissents with an opinion with which OVERTON, J., Concurs

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

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1. See also Funchess v. State, No. 47,828 (Fla. April 2, 1981)(trial court on remand for Gardner relief properly refused to provide an entirely new sentencing proceeding in which a new advisory jury could be reconvened).

2. Our disposition of this proceeding in accordance with the limitations imposed at the time we remanded this proceeding to the trial judge makes unnecessary any consideration of multiple challenges which Dougan raises to the proceeding below, to the imposition of the death penalty, to the motion denials by the trial judge, and to the absence of a resentencing jury. That the disposition of these matters is unnecessary to this proceeding does not mean that we have not reviewed or considered the arguments presented by Dougan's counsel in this appeal. We have, and the fact is that each argument presented by Dougan's counsel is fully, adequately and accurately refuted or rebutted by the contrary contentions made in appellee's brief.

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McDONALD, J. dissenting

I dissent. The original sentence in this cause was vacated. If execution as ordered is to take place, then that execution must be predicated on the last-imposed sentence, which must be free from infirmities. Just because it is the same as a prior affirmed sentence does not necessarily make this one correct; it must pass constitutional muster on its own. This sentence does not.

After previously stating that the facts of contempt were unknown, the trial judge wrongfully found that two criminal contempt convictions constituted the aggravating factors of being under a sentence of imprisonment when the murder was committed and conviction of a felony involving the use of threat or violence. Neither is true.[1] The judge also improperly found that in committing the murder the defendant knowingly created a great risk of death to many persons. There was evidence that the defendant may have sought other victims when he perpetrated this murder, but the murder endangered no one but the victim. The test set out in Kampff v. State, 371 So.2d 1007 (Fla. 1979), is not met. I also disagree with the apparent prior conclusion of this Court that anything supports the trial judge's finding that the murder was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of law[2] because I don't believe the legislature intended for that aggravating factor to apply to the circumstances of this case. Evidence supports only two of the court's findings: that the murder was committed during a kidnapping and that the murder was heinous, atrocious and cruel.

Besides finding at least two unfounded aggravating factors, the trial judge failed to recognize one statutory mitigating factor.[3] Also, the defendant presented substantial nonstatutory mitigating evidence. This evidence was properly presented and related to information on the defendant's

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[1] See Barclay v. State, 343 So.2d 1266, 1271 n. 3 (Fla. 1977).

[2] Id. n. 5.

[3] No significant prior criminal activity.

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background, which had been addressed in the pretrial report. While the trial judge was not required to agree with such evidence, he should at least have considered it and made some reference to it in the weighing process.

I would remand this cause for a new sentencing proceeding.

OVERTON, J., Concurs

Appendix A., p.5

An Appeal from the Circuit Court in and for Duval County,

R. Hudson Olliff, Judge - Case No. 74-4139 CF

Joseph M. Nursey, Atlanta, Georgia,

for Appellant

Jim Smith, Attorney General, Wallace E. Allbritton and David P. Gauldin, Assistant Attorney Generals, Tallahassee, Florida,

for Appellee

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IN THE SUPREME COURT OF FLORIDA

THURSDAY, JUNE 4, 1981

JACOB JOHN DOUGAN, JR.,	**	
Appellant,	**	CASE NO. 47,260
vs.	**	Circuit Court Case No. 74-4139
STATE OF FLORIDA,	**	
Appellee.	**	

On consideration of the motion for rehearing filed by attorney for appellant,

IT IS ORDERED by the Court that said motion be and the same is hereby denied.

ADKINS, ACTING C.J., BOYD, OVERTON, ENGLAND and ALDERMAN, JJ., Concur
McDONALD, J., Dissents

The Motion to Stay Issuance of Mandate filed by attorney for appellant is granted and proceedings in this Court and in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, are hereby stayed to and including July 6, 1981, to allow appellant to seek review in the United States Supreme Court and to obtain any further stay from that Court.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: Debbie Causseaux
Deputy Clerk

C
cc: Hon. S. Morgan Slaughter, Clerk
Hon. R. Hudson Olliff, Judge

Joseph M. Nursey, Esquire
Wallace E. Allbritton, Esquire
David P. Gauldin, Esquire

Appendix B

4990 PG 743
ICIAL RECORDS

FILED
OCT 25 1979
CLERK CIRCUIT COURT

IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO. 74-4139 DIV.S

STATE OF FLORIDA

V.

JACOB JOHN DOUGAN

SENTENCE OF JACOB JOHN DOUGAN

OCTOBER 25, 1979

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Appendix C

SUMMARY OF PROCEEDINGS

That because there has been a lapse of over four and one half years since this trial court originally imposed sentence upon this defendant - it may be well to summarize the facts from indictment to the date hereof - for the benefit of review by the Florida Supreme Court.

1. The defendants, JACOB JOHN DOUGAN, ELWOOD CLARK BARCLAY, DWYNE CRITTENDON, and BRAD W. EVANS, were all indicted September 26, 1974, for murder in the first degree in case 74-4139, as follows:

"IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY, SPRING TERM, ONE THOUSAND NINE HUNDRED AND SEVENTY-FOUR

STATE OF FLORIDA

vs.

JACOB JOHN DOUGAN, JR., ELWOOD CLARK BARCLAY, DWYNE CRITTENDON and BRAD W. EVANS

INDICTMENT FOR

MURDER IN THE FIRST DEGREE

74-4139

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

The Grand Jurors of the State of Florida and County of Duval, empaneled and sworn to inquire and true presentment make in and for the body of the County of Duval, upon their oaths, do present and charge that JACOB JOHN DOUGAN, JR., ELWOOD CLARK BARCLAY, DWYNE CRITTENDON and BRAD W. EVANS, on the 17th day of June, One Thousand Nine Hundred and Seventy-Four, in the County of Duval and the County of St. Johns, State of Florida, unlawfully and from a premeditated design to effect the death

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of Steven Anthony Orlando, did kill the said Steven Anthony Orlando, by shooting him to death with a pistol, contrary to the provisions of Section 782.04, Florida Statutes."

2. The defendants, JACOB JOHN DOUGAN, DUYNE CRITTENDON, BRAD W. EVANS, AND WILLIAM HEARN, were all indicted September 26, 1974, for murder in the first degree in case 74-4140, as follows:

"IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR DUVAL COUNTY, SPRING TERM, ONE THOUSAND NINE HUNDRED AND SEVENTY-FOUR

STATE OF FLORIDA
vs.
JACOB JOHN DOUGAN, JR., DUYNE CRITTENDON, BRAD W. EVANS, and WILLIAM HEARN

INDICTMENT FOR MURDER IN THE FIRST DEGREE
74-4140

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:
The Grand Jurors of the State of Florida and County of Duval, empaneled and sworn to inquire and take presentment make in and for the body of the County of Duval, upon their oaths, do present and charge that JACOB JOHN DOUGAN, JR., DUYNE CRITTENDON, BRAD W. EVANS and WILLIAM HEARN, on the 22nd day of June, One Thousand Nine Hundred and Seventy-Four, in the County of Duval, State of Florida, unlawfully and from a premeditated design to effect the death of Stephen Lamont Roberts, did kill the said Stephen Lamont Roberts, by stabbing him to death with a knife, contrary to the provisions of Section 782.04, Florida Statutes."

3. The defendants, Dougan, Barclay, Crittendon and Evans were tried by jury in case 74-4139 and convicted on March 3, 1975, as follows:

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Dougan - guilty of murder in the first degree

Barclay - guilty of murder in the first degree

Crittendon - guilty of murder in the second degree

Evans - guilty of murder in the second degree

4. The jury - in its advisory sentence - recommended death for defendant Dougan by a vote of ten to two.

5. The jury - in its advisory sentence - recommended life imprisonment for Barclay by a vote of seven to five.

6. That the defendants, Crittendon and Evans, were sentenced by this Court to one hundred and ninety-nine years in the Florida State Prison in case 74-4139. The defendants, Crittendon and Evans, also pleaded guilty in case 74-4140 and were sentenced by this Court for that case also. That subsequently the conviction and sentence of Crittendon was affirmed. (See 388 So.2d 1088.) Evans did not pursue appeal.

7. William Hearn, who was a defendant in case 74-4140 only - testified for the state against Dougan, Barclay, Crittendon and Evans in case 74-4139. Subsequently, Hearn entered into a negotiated plea and sentence with the state in case 74-4140 and was sentenced to fifteen years State Prison.

8. This Court sentenced both Dougan and Barclay to death in case 74-4139 on April 10, 1975.

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9. That subsequent to such sentence, the state entered a nolle prosequi as to Dougan in murder indictment 74-4140.

10. The Florida Supreme Court affirmed the conviction and sentence of both defendants, Dougan and Barclay, on March 17, 1977. (See 343 So.2d 1266.)

11. That on September 7, 1978, the Florida Supreme Court vacated the death sentences and ordered this Court to provide a hearing at which the defendants would have an opportunity to rebut any information contained in the presentence investigation report - including any confidential or other parts thereof - as provided in the case of Gardner v. Florida, 430 U.S. 349. (See 362 So.2d 657.)

12. The United States Supreme Court denied defendants, Dougan and Barclay, certiorari on October 10, 1978. (See 99 Supreme Court Reporter 249.)

13. That after the case was remanded to this Judge in September of 1978, Mr. Ernest Jackson, attorney for both defendants, Dougan and Barclay, was granted a number of continuances due to his terminal illness - and eventually he withdrew from representation of defendants.

14. This Court then appointed two private attorneys, Mr. Randolph Fallin and Mr. Kenneth Vickers, to represent defendants. That both Mr. Vickers and Mr. Fallin have wide experience in criminal practice and with particular skill in capital cases.

15. That several more continuances were granted defendants while Mr. Fallin and Mr. Vickers represented them.

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16. That eventually the defendant, Dougan, retained Mr. Joseph Nursey of the Team Defense Project, Inc., of Atlanta, Georgia, and Mr. Fallin withdrew - thereby necessitating another continuance for the defendant, Dougan.

17. Thereafter Mr. Nursey filed numerous motions, to wit:

A. Motion to Declare Unconstitutional the Florida Death Penalty Statute.

B. Motion for De Novo Sentencing Before a Jury.

C. Motion to Exclude Electronic Media Devices from Courtroom.

D. Motion for Life Sentence.

E. Motion to Disqualify Judge.

F. Motion for Defendant Dougan to Appear as Co-counsel.

G. Motion to Sever.

H. Motion for Funds for Expert Witnesses.

I. Motion for Updated Presentence Report.

J. Petition for Writ of Habeas Ad Testificandum.

K. Several motions for continuance.

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That some of said motions and procedures sought by defendant, Mr. Dougan, and his attorney, Mr. Nursey, were obviously beyond the scope and intent of the Florida Supreme Court's Gardner relief order; however, this Court heard and ruled upon each such motion - as evidenced by the Court file herein.

That the defendant, Dougan, responded to the Presentence Report during the week of August 20-24, 1979, and thereafter this case was set for sentence during the week of October 22-26, 1979.

Through an abundance of caution this Court had granted all but one of the motions for continuance filed by defendant, Dougan, and his attorneys. That the pleadings, proceedings and orders herein reveal that the defendant, Dougan, was given at least seven continuances. The last motion for continuance was filed the week of sentence and was denied for the reasons that it was frivolous, without merit and for the further reason that after one year of proceedings, hearings and delays - this case was overdue for sentence.

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EXPLANATION

In the sentence of April 10, 1975, this Court sentenced both the defendants, Dougan and Barclay, in one written sentence.

During the Gardner relief proceedings, both defendants made motion for - and were granted - a severance so that their responses to PSI and sentences would be separate and apart from one another.

That, accordingly, this Court hereby sentences each separately. However, because both were involved in and convicted of the same crime and their participation was so entwined - one with the other - that a thorough and complete sentence cannot be imposed on either without occasional reference to the other.

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COMMENTS OF JUDGE

This present case is one of the rarest types of crimes to come before this Court or any Court. The facts at trial proved that it was a PREMEDITATED - RACIAL - HATRED MURDER. The hapless victim was chosen at random, stalked and brutally murdered ONLY because he was defenseless and because he was of a DIFFERENT racial group than his murderers.

After the crime, tapes were made by the murderers wherein they described the killing and the agony of the victim. These boastful tapes were cruelly mailed to the mother of the murdered boy and to local T.V. and radio stations - bragging of the murder and announcing that it was the start of a revolution and promised further violence. One part of the tapes said "White people prepare yourself to die". It was a call for, and an attempt to start a racial war.

Such ravings could only be from a depraved homicidal mind.

Similar sentiments were violently uttered on another continent in our own recent history. During World War II, when I was about nineteen years old, I was among some of the first American Combat Parachute Infantry Soldiers to enter Nazi Germany, and I was present at the liberation of several slave labor and concentration camps. Particularly, the concentration camps made a vivid and lasting impression upon me. I saw human corpses stacked like cord wood - to be buried or burned in the ovens.

Those people had been murdered in various ways, by starvation, torture, gassing or they were shot. They were murdered because they were all guilty of the same crime - they were different from

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the people who murdered them. They were either of a different race, culture, religion or political belief. That was their only crime - they were different. Surely we must have learned some lasting lesson from that tragic holocaust.

The law does not require that we like each other - nor is it illegal to have prejudices - but it is unlawful to do injury to another person because of that hate and prejudice.

This type of random, racial - hate murder, is almost impossible to believe. Animals hunt and kill for food and, in time of war, men kill in self defense those who would kill them. But, to premeditatedly pick a victim at random - a person not even known to his murderers - and who was chosen for death only because he was guilty of being of a different race - is heinous, atrocious, cruel and an unthinkable crime. The crime itself was horrible, but the attempt to incite racial war and a mass bloodletting - compounded the heinous quality of the murder.

We do not have to like each other - but we must respect the rights of others and we must either live together - or surely we will die together.

Jacksonville and, indeed, the nation has made great progress in race relations and understanding over the last few years. But you, who have committed this racial - hatred murder, have done more to disrupt those good relations and progress than any other one factor in recent time.

You have done a gross disservice to both the black and white citizens of this City. You have given fuel to those who want to think the worst of the people of your race - and you have caused

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consternation and disgust amongst both blacks and whites of good will who are most anxious to help us achieve a society of equality.

Until your arrest - terror stalked the streets of this City - and it was only due to the good will of both our black and white citizens that order prevailed and further violence and retaliatory acts were not committed.

Nothing good has, or ever will, come from the murder of Stephen Anthony Orlando, but the tragic slaughter of this eighteen year old youth can be used as an example of the monumental stupidity of racial - hatred murder.

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OUTLINE OF THE ESSENTIAL FACTS

The essential facts as brought out in the trial and by the evidence were that the four defendants were part of a group that termed itself the "BLACK LIBERATION ARMY" (BLA), and whose apparent sole purpose was to indiscriminately kill white persons and to start a revolution and a racial war.

The testimony shows that on the evening of June 17, 1974, Dougan, Barclay, Crittendon, Evans and Hearn set out in a car armed with a twenty-two caliber pistol and a knife with the intent to kill a "devil". The devil being any white person that they came upon under such advantageous circumstances that they could murder him, her or them.

That as they drove around the City of Jacksonville they made several stops and observed a number of white persons as possible victims, but decided that the circumstances were not advantageous and that they might be observed or thwarted in their evil purpose by possible witnesses. At one stop, Dougan wrote out a note - which was to be placed on the body of the victim ultimately chosen for death.

Eventually the five men headed for Jacksonville Beach where they picked up a hitchhiker, eighteen year old Stephen Anthony Orlando. Against his will and over his protest they drove him to an isolated trash dump, ordered him out of the car, threw him down and Barclay repeatedly stabbed him with a knife. Dougan then put his foot on Orlando's head and shot him twice - once in the cheek and once in the ear - killing him instantly. Crittendon and Evans played a lesser degree in the murder and were thus convicted of murder in the second degree.

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The evidence showed that none of the defendants knew or had ever seen Orlando before they murdered him. The note, which Dougan had previously written, was stuck to Orlando's body by the knife of the murderers. The note read:

> "Warning to the oppressive state. No longer will your atrocities and brutalizing of black people be unpunished. The black man is no longer asleep. The revolution has begun and the oppressed will be victorious. The revolution will end when we are free. The Black Revolutionary Army. All power to the people."

Early the following morning the dead body of Stephen Anthony Orlando was discovered - police were called to the scene and the knife and note were preserved for evidence and photos were taken of the dead body and surrounding area. An F.B.I. document and handwriting expert compared the death note with other handwriting of Dougan and testified that they were both written by the same person.

Subsequent to the murder - the defendants, Barclay and Dougan, by their own admission, and supported by the testimony of state's witnesses, made a number of tape recordings concerning the murder. These recordings were mailed to the mother of Stephen Anthony Orlando and to radio and television stations. All of the tapes contained much the same in content and intent. The following two pages are excerpts of several tapes which were typical of all - as follows:

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"Stephen A. Orlando was not murdered, by no means. He was given a fair trial, the same type of fair trial that you gave black people, those same black people who occupy 25 per cent of the American population and 75 per cent of the American prison population. He was tried and found guilty and was executed . . ."

"If you want to know how to spell "Americans", just spell it with three Ks instead of one C, you know, like in Ku Klux Klan. You know white people, you can't do right; your nature is evil. But you gonna pay anyway so that black man's freedom must be gotten no matter what it takes. We can't depend on you for our freedom. We tried that once. You freed us with good ole Abe. He gave us the Emancipation Proclamation. That was the first time we were free. Then we dreamed a little longer, suffered a whole lot more, until you decided 'I'm gonna free those niggers again.' Then you gave us the Civil Rights Bill. How many times do you have to free a people before they are free? You know, like, once you freed us, twice you freed us. The third time you might free us for good, just wipe us out like you're trying to do our race as it is, pushing genocide off on black women, trying to eliminate our race, pushing those jive pills off on them. You don't force that off into your urban white, lily white neighborhoods . . ."

"Mary Ann Mallory [Orlando's mother], don't feel so bad. You haven't lost a son; you got a hero. Your son will go down in black history. He'll be enshrined when black people get their freedom . . ."

"You take advantage of us. You oppress us in our black ghettos, then when we rebel, then you come in with your tanks and your National Guards and you spray black people with all that tear gas and you just take advantage of black people . . ."

"We're tired, white man. We're tired of being hassled, pushed around, told what to do and then having to send our kids to school with you and your funky white offspring, those things, those stringy-haired things you call your kids. . ."

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"You see, you white devil, our minds are far superior to that of a white man due to the fact that you have a six-ounce brain and the black man has a seven-and-a-half ounce brain . . ."

"The reason Stephen was only shot twice in the head was because we had a five pistol. It only shot twice and then it jammed; you can tell it must have been made in America because it wasn't worth a shit. He was stabbed in the back, in the chest and the stomach, ah, it was beautiful. You should have seen it. Ah, I enjoyed every minute of it. I loved watching the blood gush from his eyes . . ."

"He died in style, though, begging, begging and pleading for mercy, just as black people did when you took them and hung them to the trees, burned their houses down, threw bombs in the same church that practices the same religion that you forced on these people, my people.. ."

"We are everywhere; you cannot hide from us. You have told your people to get off the streets and to stay home. That will not help, for one night they will come home and we will be there waiting. It has been said, look for us and you cannot see us; listen for us and you cannot hear us; feel for us and you cannot touch us. These are the characteristics of an urban guerilla."

All of the tapes ended with the words "Signed, Your Black Liberation Army".

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William Hearn, one of the five persons present at the murder of Orlando, testified that he witnessed the murder and told of the participation of Barclay, Dougan, Evans and Crittendon - and he together with witnesses James Mattison, Edred Black, and Otis Boss, Jr., stated that they were present when the boastful tapes were made and they identified the voices of Dougan and Barclay when the tapes were played to the jury.

In defense, Dougan denied the murder and the death note - but admitted he made the tapes based on newspaper accounts of the crime. He said that the purpose of the tapes was to dramatize the plight of black people. Barclay admitted making the tapes for the same political reasons - but denied any participation in the murder. Each defendant had alibis as to his whereabouts at the time of the murder, but the jury found them all guilty of murder.

The jury found both Barclay and Dougan guilty of murder in the first degree and in its advisory sentence the jury recommended death for Dougan by a vote of ten to two. In its advisory sentence the jury recommended life imprisonment for Barclay by a seven to five vote.

That thereafter this Court denied motions for a new trial and adjudged each guilty of murder in the first degree.

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Before imposing the sentence for Murder in the First Degree, this Judge has considered those matters brought out by the defendant, Mr. Dougan, in his responses to the PSI. The Court has also closely examined and written its findings as to each of the elements of aggravation and/or mitigation which are set forth in the Florida Statutes and which were guidelines for the jury in considering its advisory sentences.

The Court has summarized the facts as brought out in the trial, in the presentence reports, in defendant's responses to the presentence reports and has applied them to each element of aggravation and mitigation where applicable.

The elements of Aggravation and Mitigation have been summarized below in reverse order.

SUMMARIZATION OF MITIGATION

ELEMENTS

A. WHETHER DEFENDANT HAD NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY.

FACT:

The defendant, Dougan, has a record showing one traffic related offense and two convictions for contempt of court. His rap sheet also shows that he was charged with another murder (74-4140) in which the state entered a nolle prosequi after this Court sentenced him to death in April, 1975.

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CONCLUSION:

There is neither an aggravating or mitigating circumstance as to the defendant Dougan because the facts of the contempt of court are not known at this time. The additional murder charge cannot be considered because it was not prossed after this Court's death sentence in April, 1975.

B. WHETHER THE MURDER WAS COMMITTED WHILE DEFENDANT WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

FACT:

That Dougan had no claim or defense of insanity or emotional instability. He had an alibi for the time of the crime and proclaimed his innocence. Nor was there any evidence from the PSI that he suffered emotional disturbances in the past or at the time of trial.

CONCLUSION:

There is no mitigating circumstance under this paragraph because there is no evidence of extreme mental or emotional disturbance in the past, at the time of the murder - or at the time of trial.

C. WHETHER THE VICTIM WAS A PARTICIPANT IN THE CONDUCT OF THE DEFENDANT OR CONSENTED TO THE ACT.

FACT:

The defendant Dougan, together with Barclay, Crittendon and Evans, had already decided upon a course of homicide and were looking for a victim when they spotted Stephen Anthony Orlando

and offered him a ride. There was evidence and testimony that the victim urged they take him to a house - so that he could get out and away from his abductors. Instead, he was taken to a trash dump and there the unarmed youth was ordered out of the car - knocked to the ground - stabbed repeatedly by Barclay and shot by Dougan.

CONCLUSION:

There is no mitigating circumstance under this paragraph because the defendant Dougan and the others intended to kill Orlando at the time he got into the car. Orlando could not, and would not, in any way, consent to his own murder, and in fact, he begged for mercy - all in vain.

D. WHETHER DEFENDANT WAS AN ACCOMPLICE IN THE MURDER COMMITTED BY ANOTHER PERSON, AND THE DEFENDANT'S PARTICIPATION WAS RELATIVELY MINOR.

FACT:

The participation by Crittendon and Evans was lesser in degree and they have been adjudged guilty of murder in the second degree.

FACT:

Both Dougan and Barclay were the major and primary participants in the murder. The evidence shown that Barclay was the first to demonstrate homicidal intent by throwing the victim to the ground and repeatedly stabbing

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him with a knife - as Orlando pleaded for his life. Then Dougan rendered the Coup De Grace by shooting the victim twice in the head.

A close attention to Barclay's boastful remarks on the tapes will lead any listener to conclude that he was a major participant and proud of that participation. Had Dougan been the only major participant - then perhaps Orlando, who was struggling for his life, might have been able to escape. But Barclay and Dougan acting in concert overpowered, stabbed and shot their common prey.

FACT:

Dougan, as shown by the evidence, was the originator and leading force in the idea and he wrote the note and shot the victim after Barclay repeatedly stabbed him - but it was th[illegible] two of them who were the primary culprits. The lesser participants being Crittendon and Evans - which fact was recognized by the jury finding Dougan and Barclay guilty of Murder in the First Degree and the others guilty of Second Degree Murder.

CONCLUSION:

There is no mitigating circumstance under this paragraph as to Dougan - who was the instigator of and a major participant in the murder while acting in concert with Barclay.

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E. WHETHER DEFENDANT ACTED UNDER EXTREME DURESS OR UNDER THE SUBSTANTIAL DOMINATION OF ANOTHER PERSON.

FACT:

Never, at any time, in any way, was it shown that Dougan acted under duress of any kind. It is apparent from the evidence at trial and the demeanor of the defendants that Dougan was a personality of some degree - and was strong, eloquent and persuasive with the other defendants. Dougan, as the evidence showed, was certainly not under the dominance of any other person, but it is evident from all that occurred at the murder scene that both Dougan and Barclay committed a foul and dastardly murder with each vying to outdo the other in homicidal ferocity.

FACT:

That at the responses to the presentence report, approximately twenty-six persons spoke in behalf of Dougan. The consistent theme of their testimony was that he was active in a number of organizations in leadership capacity; that he was a doer, a mover and a leader.

CONCLUSION:

There is no mitigating circumstance as to the defendant under this paragraph.

F. WHETHER THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED.

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FACT:

There was never any suggestion or claim of insanity or any showing, by any evidence, that Dougan did not appreciate the criminality of his acts or that he could not conform his conduct to the requirements of the law. The evidence showed that upon setting out on a homicidal course that there was ample opportunity for Dougan - the instigator - to withdraw from the plot, but he and the others calculatedly and premeditatedly stalked their victim and produced his death - knowing the full consequences thereof.

That the testimony of persons in behalf of Dougan at the responses to presentence report in August, 79, was that he had a keen understanding of right and wrong and social justice. He had been an Eagle Scout and planned policy for several organizations. Of all the defendants he, Dougan, had the full capacity to appreciate the criminality of his conduct and to conform it to the requirements of the law. That his culpability in this murder is enhanced by his appreciation of those requirements - and his total abandonment of them.

FACT:

His capacity to appreciate the criminality of his acts or to conform to the law was not impaired. No incapacity was apparent except an immense ego which led him and the other defendants to believe they would not be discovered and brought to tasks for their deed.

OBITER DICTUM:

If an inflated ego and a highly unrealistic and undeserved belief in his cleverness

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and infallibility would make him not appreciate the criminality of his conduct or substantially impair his ability to adhere to the right - then any person with a similar state of mind would be given carte blanche to decimate that portion of the population against whom he had a real or imagined grievance.

CONCLUSION:
There is no mitigating circumstance under this paragraph as to Dougan.

G. THE AGE OF DEFENDANT AT THE TIME OF THE CRIME.

FACT:
The defendant Dougan was twenty-seven years of age, had completed senior high school and had served in the military. He held various jobs - including that of a karate instructor. He had been married, fathered two children, and was divorced. He was in good health, stood five feet ten inches tall weighing one hundred and forty-five pounds. He was nine years older and larger than his eighteen year old victim.

CONCLUSION:
There is no mitigating circumstance as to defendant under this paragraph.

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THE COURT NOW SUMMARIZES THE FACTS BROUGHT OUT IN TRIAL AND APPLIES THEM TO THE ELEMENTS OF AGGRAVATION WHICH WERE CONSIDERED BY THE JURY IN ARRIVING AT THEIR ADVISORY SENTENCE.

SUMMARIZATION OF AGGRAVATING ELEMENTS

A. WHETHER THE DEFENDANT WAS UNDER SENTENCE OF IMPRISONMENT WHEN HE COMMITTED THE MURDER OF WHICH HE HAS BEEN CONVICTED.

FACT:
Dougan was not under sentence of imprisonment when convicted of this murder. He had two previous criminal contempt convictions. The second murder case against him was nolle prossed after the death sentence by this Court in April, 1975.

CONCLUSION:
The two criminal contempt convictions of the defendant Dougan are aggravating circumstances without even considering the murder charge which was nolle prossed after his original sentence herein.

B. WHETHER DEFENDANT HAD PREVIOUSLY BEEN CONVICTED OF ANOTHER CAPITAL FELONY OR OF A FELONY INVOLVING THE USE OR THREAT OF VIOLENCE TO THE PERSON.

FACT:
Whether Dougan's prior convictions for contempt of court was for disobedience of a Court order -

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or for some act of violent disobedience or contempt in or out of Court is not known at this time.

CONCLUSION:

As to defendant this is more an aggravating than mitigating circumstance.

C. WHETHER, IN COMMITTING THE MURDER OF WHICH HE HAS BEEN CONVICTED, THE DEFENDANT KNOWINGLY CREATED A GREAT RISK OF DEATH TO MANY PERSONS.

FACT:

The testimony and evidence showed that Dougan and the other three defendants drove around various areas of the City looking for a victim or victims - thus potentially exposing numbers of people to a great risk of death. On at least two occasions the defendants parked their car - and cased areas where they had chosen potential victims - but were thwarted by the circumstances that fortuitously existed. Thus five persons were saved from their fatal plan. If was not out of concern for the lives of many persons that only a single victim was chosen, but rather out of concern for their own detection and capture.

The note written by Dougan and left on the dead body of their victim and the tapes - made by Dougan and others - which were sent to the media, were a declaration of war by

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the murderers against white people. It was a call for others to join in their homicidal schemes and it was a call for revolution and racial war. The messages said "white people prepare yourself to die". If they only meant the white people of Jacksonville - that would mean roughly seventy percent of more than half a million people.

Dougan and the other defendants did, in fact, knowingly create a great risk of death to many persons. The extent of that danger - had they been successful to any degree - boggles the mind by contemplating the monstrous consequences.

CONCLUSION:

There is an aggravating circumstance here because not only did he and other defendants murder Stephen Anthony Orlando - they also created a great risk of death to others, before, during and after the murder.

D. WHETHER THE MURDER OF WHICH DEFENDANT WAS CONVICTED WAS COMMITTED WHILE HE WAS ENGAGED IN THE COMMISSION OF, OR AN ATTEMPT TO COMMIT, OR FLIGHT AFTER COMMITTING OR ATTEMPTING TO COMMIT, ANY ROBBERY, RAPE, ARSON, BURGLARY, KIDNAPPING, AIRCRAFT PIRACY, OR THE UNLAWFUL THROWING, PLACING OR DISCHARGING OF A DESTRUCTIVE DEVICE OR BOMB.

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FACT:

After the hitchhiking victim was picked up by the defendants, they refused to take him to a place which he requested. Instead they would not let him out of the car and drove him to a trash dump where he was murdered. The only element of this paragraph which has any meaning to the present case is the element of kidnapping. Although defendants were only charged with murder - all of the elements of kidnapping or false imprisonment were certainly present in this case.

CONCLUSION:

There is an aggravating circumstance as to the defendant under this paragraph.

E. WHETHER THE MURDER OF WHICH THE DEFENDANT HAS BEEN CONVICTED WAS COMMITTED FOR THE PURPOSE OF AVOIDING OR PREVENTING A LAWFUL ARREST OR EFFECTING AN ESCAPE FROM CUSTODY.

CONCLUSION:

This paragraph does not seem to apply to the present case.

F. WHETHER THE MURDER OF WHICH DEFENDANT HAS BEEN CONVICTED WAS COMMITTED FOR PECUNIARY GAIN.

CONCLUSION:

This paragraph does not seem to apply to the present case.

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G. WHETHER THE MURDER OF WHICH THE DEFENDANT HAS BEEN CONVICTED WAS COMMITTED TO DISRUPT OR HINDER THE LAWFUL EXERCISE OF ANY GOVERNMENTAL FUNCTION OR THE ENFORCEMENT OF THE LAWS.

FACT:

More than any other factor, this paragraph together with the racial hatred murder - seems to ha' been one of the primary motives for the murder. The stalking of an innocent victim and slaughtering him only because he was of a different race than his murderers and then using a knife to stick the note, written by Dougan, into his body - which note read:

> "Warning to the oppressive state. No longer will your atrocities and brutalizing of black people be unpunished. The black man is no longer asleep. We must destroy our enemy therefore you must die. The revolution has begun and the oppressed will be victorious. The revolution will end when we are free."

This was a call to revolution. The tapes made by Dougan and the others and sent to the media was a further and more violent call for a race war and for revolution. Typical excerpts of the tapes are as follows on the next two pages.

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"To the oppressive state: This is directed to enemy Mary Ann Mallory, Lt. E. A. Orlando (the victim's mother and father) and especially pig Garrett. Stephen A. Orlando was not murdered; he was executed and made to pay for the political crimes that have been perpetrated upon black people. No longer will your crimes go unpunished. A revolution has begun and you are the enemy.

"You white racist Americans, because your nature is that of a white devil, you can never do right. So the black man's freedom depends upon your defeat or your death. The revolution will end only when you are dead or when black people are free.

"Mary Ann Mallory, you should be proud that your son, Stephen, was the first to die for our black cause. Many more will follow him until we are free. I know that pig Garrett did not want to publicize the contents of the execution note found on Stephen's dead body, but he knows that revolution is very serious. He should be alarmed for now he knows that he and people like him will have to pay for their crimes. Black people have given us support in what we are doing because you will not listen to nothing (sic) else but that which comes from the barrel of a gun.

"The reason Stephen was only shot twice in the head was because the gun jammed. He was stabbed in the back, chest and the stomach to symbolize the 400 years of hangings, castrations, brutalities and rapings of my black people. He begged, oh yes, he begged for mercy as did my people when you murdered them, and we gave him no mercy, that's right, no mercy, for every time I pulled trigger, every time I saw the knife go inside his body, satisfaction came unto me because I knew, I knew, that the people who died because of him, because of his ancestors and because of you were now being repaid.

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"Remember, white racist America, this could happen to you also as long as black people are oppressed. We as black people are no longer begging anymore. Even we will take what is ours, what is rightly ours. We created it so we should have it. The Black Liberation Army will destroy you. They will destroy everything that stands in the way of the black man's freedom. To all my black people, black warriors have emerged on the scene to show you to the way to freedom and the destruction of our enemy, the white man. White people, prepare yourself to die. From your Black Liberation Army."

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FACT:

The messages and actions of Dougan and the other defendants were, in all ways, a call to disrupt and hinder the lawful exercise of governmental functions and the enforcement of the laws. It was a call to destroy our government and its laws by violent racial revolution.

CONCLUSION:

This is an aggravating circumstance as to the defendant Dougan.

H. WHETHER THE MURDER OF WHICH DEFENDANT HAS BEEN CONVICTED WAS ESPECIALLY HEINOUS, ATROCIOUS OR CRUEL.

FACT:

The defendant Dougan, together with the other defendants, premeditatedly and deliberately stalked their victim and brutally murdered him.

The victim's only crime was that he was of a different racial group than his murderers. He in no way offended them - except by being white - nor did he even know them before that fatal evening.

The victim, Stephen Anthony Orlando, was knocked to the ground and repeatedly stabbed

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by Barclay as he writhed in pain begging for mercy. Then Dougan shot him twice in the head at close range.

In addition to an unprovoked, premeditated murder - it was a declaration of war against a racial group - with the promise of more violence, death and revolution to come.

Such acts of Dougan and the other defendants were of the basest, most callous homicidal type and shriek out for the severest punishment and the termination of the existence of the perpetrator.

CONCLUSION:

That the murder of which the defendant Dougan was convicted was especially heinous, atrocious and cruel.

COMMENT

That the defendant Dougan did not present any matters in his responses to the PSI which mitigated the heinous, atrocious and cruel nature of this crime.

That the passage of more than four and one half years from the date of this murder until the date of this sentence - has not diminished the nature of this crime. Stephen Anthony Orlando was murdered and the facts of the crime and the call for bloodshed and revolution are the same.

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CONCLUSION OF THE COURT

THERE ARE SUFFICIENT AND GREAT AGGRAVATING CIRCUMSTANCES WHICH EXIST TO JUSTIFY THE SENTENCE OF DEATH AS TO THE DEFENDANT JACOB JOHN DOUGAN.

AUTHORITY FOR SENTENCE

That under Florida Law the Judge sentences a defendant, convicted of Murder in the First Degree, either to death or life imprisonment. This is an awesome burden to be placed upon the Judge - but in the landmark Florida case of State v. Dixon, 283 So.2d I, the Florida Supreme Court said that when such discretion can "be shown to be reasonable and controlled, rather than capricious and discriminatory, then it meets the test of Furman v. Georgia, 408, U.S. 238.

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COMMENTS OF JUDGE

My twenty-seven years of legal experience have been almost exclusively in the field of Criminal Law. I have been a defense attorney in criminal cases, an Advisor to the Public Defender's Office, a Prosecutor for eight and one-half years and a Criminal Court and Circuit Court Judge - Felony Division - for almost ten years. During these twenty-seven years I have defended, prosecuted and held trial in almost every type of serious crime.

Because of this extensive experience, I believe I have come to know and understand when, or when not, a crime is heinous, atrocious and cruel and deserving of the maximum possible sentence.

My experience with the sordid, tragic and violent side of life has not been confined to the Courtroom. I, like so many American Combat Infantry Soldiers, walked the battle fields of Europe and saw the thousands of dead American and German soldiers and I witnessed the concentration camps where innocent civilians and children were murdered in a war of racial and religious extermination.

To attempt to initiate such a race war in this country is too horrible to contemplate for both our black and white citizens. Such an attempt must be dealt with by just and swift legal process and when justified by a Jury verdict of guilty - then to terminate and remove permanently from society those who would choose to initiate this diabolical course.

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HAD THE DEFENDANT BEEN EXPOSED TO THE CARNAGE OF THE BATTLEFIELDS AND THE HORRORS OF THE CONCENTRATION CAMPS INSTEAD OF MOVIES, TELEVISION PROGRAMS AND REVOLUTIONARY TRACTS GLORIFYING VIOLENCE AND RACIAL STRIFE - THEN PERHAPS HIS THOUGHTS AND ACTIONS WOULD HAVE TAKEN A LESS VIOLENT COURSE.

Having set forth my personal experiences above, it is understandable that I am not easily shocked or moved by tragedy - but this present murder and call for racial war is especially shocking and meets every definition of heinous, atrocious and cruel. The perpetrator thereby forfeits further right to life - for certainly his life is no more sacred than that of the innocent eighteen year old victim, Stephen Anthony Orlando.

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SENTENCE

Having adjudged Jacob John Dougan guilty of Murder in the First Degree, I hereby sentence you to death. I order that you be taken by the proper authorities to the Florida State Prison and there kept in close confinement until the date of your execution be set.

That on such day, as set, you be put to death by having electrical currents passed through your body in such amounts and frequency until you are rendered dead.

I advise you that you have thirty days from today to take an appeal from the sentence which I have just imposed upon you and I hereby appoint the Public Defender's Office to represent you on such appeals.

May God have mercy upon your soul.

DONE AND ORDERED AND SENTENCED in Open Court, at the Duval County Courthouse, Jacksonville, Florida, on this 25th day of October, 1979.

R. Hudson Olliff

R. HUDSON OLLIFF - CIRCUIT COURT JUDGE

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Fla. Stat. §782.04 Murder

(1)(a) The unlawful killing of a human being, when perpetrated from a premediated design to effect the death of the person killed or any human being, or when committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any arson, involuntary sexual battery, robbery, burglary, kidnapping, aircraft piracy, or unlawful throwing, placing, or discharging of a destructive device or bomb, or which resulted from the unlawful distribution of heroin by a person 18 years of age or older when such drug is proven to be proximate cause of the death of the user, shall be murder in the first degree and shall constitute a capital felony, punishable as provided in §775.082.

(b) In all cases under this section, the procedure set forth in §921.141 shall be followed in order to determine sentence of death or life imprisonment.

Fla. Stat. §921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

(1) Separate proceedings on issue of penalty -- Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by §775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United Sates or the Constitution of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) Advisory sentence by the jury.-- After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist as enumerated in subsection (6) which outweigh the aggravating circumstances found to exist; and
(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) Findings in support of sentence of death. --Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitiagting circumstacnes, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
(b) That there are insufficient mitigating circumstances as enumerated in subsection (6) to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentence proceedings. If the court does not make the findings requiring the death sentence, the court shall impose sentence of life imprisonment in accordance with §775.082.

(4) Review of judgment and sentence.--The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within sixty (60) days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed thirty (30) days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) Aggravating circumstances.--Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.
(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
(c) The defendant knowingly created a great risk of death to many persons.
(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.
(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
(f) The capital felony was committed for pecuniary gain.
(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

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(h) The capital felony was especially heinous, atrocious, or cruel.

(6) Mitigating circumstances.--Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

Fla. Stat. §38.23 Contempts defined

A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly. But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt.

Fla. Stat. §900.04 Contempts

Said courts, in the exercise of their criminal jurisdiction may punish for contempts as in the exercise of their civil jurisdiction, and the criminal courts of record shall possess, in this respect, the same powers as the circuit courts.

Rule 3.230 Disqualification of Judge

(a) The State or the defendant may move to disqualify the judge assigned to try the cause on the grounds: that the judge is prejudiced against the movant or in favor of the adverse party; that the defendant is related to the said judge by consanguinity or affinity within the third degree; or that said judge is related to an attorney or counselor of record of the defendant or the state by consanguinity or affinity within the third degree; or that said judge is a material witness for or against one of the parties to said cause.

(b) Every motion to disqualify shall be in writing and be accompanied by two or more affidavits setting forth facts relied upon to show the grounds for disqualification, and a certificate of counsel of record that the motion is made in good faith.

(c) A motion to disqualify a judge shall be filed no less than 10 days before the time the case is called for trial unless good cause is shown for failure to so file within such time.

(d) The judge presiding shall examine the motion and supporting affidavits to disqualify him for prejudice to determine their legal sufficiency only, but shall not pass on the truth of the facts alleged nor adjudicate the question of disqualification. If the motion and affidavits are legally sufficient, the presiding judge shall enter an order disqualifying himself and proceed no further therein. Another judge shall be designated in a manner prescribed by applicable laws or rules for the substitution of judges for the trial of causes where the judge presiding is disqualified.

(e) When the prosecuting attorney or defendant shall have suggested the disqualification of a trial judge and an order shall have been made admitting the disqualification of such judge, and another judge shall have been assigned to act in lieu of the judge so held to be disqualified the judge so assigned shall not be disqualified on account of alleged prejudice against the party making the motion in the first instance, or in favor of the adverse party, unless such judge shall admit and hold that it is then a fact that he, the said judge, does not stand fair and impartial between the parties and if such judge shall hold, rule and adjudge that he does stand fair and impartial as between the parties and their respective interest, he shall cause such ruling to be entered on the minutes of the court, and shall proceed to preside as judge in the pending cause. The ruling of such judge may be reviewed by the appellate court, as are other rulings of the trial court.